

C-5003

**PROFESSIONAL SERVICES AGREEMENT WITH
NEWFIELDS, LLC FOR
LINDA ISLE SEDIMENT TESTING**

Companies

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this 14th day of November, 2011 by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and NEWFIELDS, LLC, a Georgia Limited Liability Company ("Consultant"), whose address is 4729 NE View Drive, Port Gamble, WA 98364 and is made with reference to the following:

9/22/11
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RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City is working with the County of Orange to conduct a joint analysis of the sediment in the channels between Linda Isle and Harbor Island and Harbor Island Drive to prepare for a future dredging project.
- C. City desires to engage Consultant to perform collection and analysis for the Linda Isle Sediment Testing ("Project").
- D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- E. The principal member of Consultant for purposes of Project shall be William Gardiner.
- F. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the above written date, and shall terminate on December 31, 2012 unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference. Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Work" or "Services"). The City may elect to delete certain tasks of the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

3.2 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.3 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Thirty Thousand, Seven Hundred Thirty Dollars and no/100 (\$30,730.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in writing in advance by City. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:

4.3.1 The actual costs of subconsultants for performance of any of the Services that Consultant agrees to render pursuant to this Agreement, which have been approved in advance by City and awarded in accordance with this Agreement.

4.3.2 Approved reproduction charges.

4.3.3 Actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Consultant in the performance of this Agreement.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

4.5 Notwithstanding any other provision of this Agreement, when payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until City has accepted the final Work under this Agreement

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated William Gardiner to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the **Public Works Department**. Chris Miller, Harbor Resources Manager or his designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his authorized representative shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

7.1 In order to assist Consultant in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

7.1.1 Provide access to, and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

7.1.2 Provide blueprinting and other Services through City's reproduction company for bid documents. Consultant will be required to coordinate the required bid documents with City's reproduction company. All other reproduction will be the responsibility of Consultant and as defined above.

7.1.3 Provide usable life of facilities criteria and information with regards to new facilities or facilities to be rehabilitated.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards. All Services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force in effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator and/or his duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

14.1 Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

14.2 Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

14.2.1 Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or subconsultants. The cost of such insurance shall be included in Consultant's bid.

14.3 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

14.4 Coverage Requirements.

14.4.1 Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Consultant's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Consultant shall require each subconsultant to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subconsultant's employees.

14.4.1.1 Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) prior to such change.

14.4.1.2 Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

14.5 General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

14.6 Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

14.7 Professional Liability (Errors & Omissions) Coverage. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) limit per claim and in the aggregate.

14.8 Other Insurance Provisions or Requirements.

14.8.1 The policies are to contain, or be endorsed to contain, the following provisions:

14.8.1.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

14.8.1.2 Enforcement of Contract Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

14.8.1.3 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

14.8.1.4 Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

14.9 Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement.

14.10 Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or

joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

City and Consultant agree that subconsultants may be used to complete the Work outlined in the Scope of Services. The subconsultants authorized by City to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

19. INTELLECTUAL PROPERTY INDEMNITY

The Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in Consultant's drawings and specifications provided under this Agreement.

20. RECORDS

Consultant shall keep records and invoices in connection with the Work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

21. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this paragraph is intended to limit City's rights under the law or any other sections of this Agreement.

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work

performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Chris Miller
Public Works Department
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3043
Fax: 949-644-3318

25.2 All notices, demands, requests or approvals from CITY to Consultant shall be addressed to Consultant at:

Attention: William Gardiner
Newfields, LLC
4729 NE View Drive
Port Gamble, WA 98364
Phone: 360-297-6040
Fax: 360-204-1286

26. CLAIMS

The Consultant and the City expressly agree that in addition to any claims filing requirements set forth in the Contract and Contract documents, the Consultant shall be required to file any claim the Consultant may have against the City in strict conformance with the Tort Claims Act (Government Code sections 900 *et seq.*).

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are

reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

28.1 Compliance With all Laws

Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.2 Waiver

A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.3 Integrated Contract

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.4 Conflicts or Inconsistencies

In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.5 Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.6 Amendments

This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

28.7 Severability

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.8 Controlling Law And Venue

The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

28.9 Equal Opportunity Employment

Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

28.10 No Attorney's Fees

In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

28.11 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY**

Date: 9/12/11

By: [Signature]
Leonie Mulvihill
Assistant City Attorney *MS 9/9/11*

ATTEST:

Date: 11-14-11

By: [Signature]
Leilani I. Brown
City Clerk



**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: 9/26/11

By: [Signature]
Stephen G. Badum
Public Works Director *companies*

**CONSULTANT: NEWFIELDS, LLC, a
Georgia Limited Liability Company**

Date: 9/22/11

By: [Signature]
Ginger L. Hicks,
Chief Operating Officer

Date: 9-22-11

By: [Signature]
Deborah B. Schwall,
Treasurer

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates

EXHIBIT A

SCOPE OF WORK

Task 1: Sampling and Analysis Plan

The project SAP has been prepared and presented to the Southern California Dredged Materials Management Team (SC-DMMT). The SC-DMMT is an interagency committee that is responsible for the management and permitting of dredged material projects in southern California. Slight modifications to the plan are required to meet SC-DMMT requirements. Costs associated with this effort will be limited and will be incorporated into the overall project costs.

Task 2: Field Sampling and Sample Processing

We will sample approximately 10 stations within the project area, representing two dredged material management units (DMMUs). Station locations will be selected based on historic uses in the area, geotechnical information about the upland site, and sediment data from recent surveys (NewFields), with the intent that the material evaluated during this investigation is representative of the excavated sediment. Sediment will be collected to project depth plus a two-foot overdredge. Sediment cores are expected to be 3 to 7 ft. in length. The coordinates for each station will be recorded using dGPS and the length and general characteristics of each core will be recorded in field logs. Cores from the appropriate stations will be composited into two analytical samples.

In addition to evaluating the area composite, sediment will be collected from the EPA-designated reference site for the LA-3 disposal site located at a depth of approximately 450 m. The reference sediment will provide a point of comparison for material proposed for placement at the ocean disposal site. Field sampling is expected to require one day for collection of samples from the project area and one day for collection of samples from the reference station. Additional mobilization and demobilization costs are included in the cost estimate for field sampling.

Task 3: Chemical Analysis of Sediment Samples and Test Composites

Chemical analysis will be performed on the test composites and the LA-3 reference sediment. All individual stations will be evaluated for sediment grain size and mercury. Sediment grain size is critical to beach nourishment suitability determinations. Grain size data for individual stations will allow groups of stations to be "recomposed" based on grain size, maximizing the amount of material that can be used for beach replenishment. Mercury analysis has been required for each station by the SC-DMMT. In addition, sediment from each station will be frozen for archive in case future chemical analysis is required.

The test composite and reference samples will be analyzed for sediment grain size, TOC, and a suite of EPA priority pollutants: metals (including mercury), polycyclic aromatic hydrocarbons (PAHs), chlorinated pesticides (including 2,4' and 4,4' DDT groups), polychlorinated biphenyls

(PCB aroclors), organotins, and pyrethroids. Analytical Resources Inc. of Tukwila, Washington or Physis Labs in Anaheim, California will perform the chemical analysis.

Analytical precision and accuracy will be evaluated using quality assurance/quality control (QA/QC) samples with each analytical batch. QA/QC analysis will include blanks, lab-control spikes, and matrix spike/matrix spike duplicates. NewFields will evaluate all chemistry QA/QC data and its potential implications on the analytical results from the test samples.

Task 4: Biological Testing of Sediment Composites

Two test composites will be evaluated for potential biological effects related to the dredging and placement of the proposed dredged material following EPA and USACE guidance (the Ocean Testing Manual and the Inland Testing Manual). Tests will include laboratory evaluations of both the solid-phase and the suspended-particulate phase of the test composite. The solid-phase tests provide an estimate of toxicity to benthic organisms at the disposal site. Solid-phase tests will include 10-day acute tests with an amphipod, *Ampelisca abdita*, and the polychaetes worm, *Neanthes arenaceodentata*. Reference sediment is also tested for benthic toxicity to provide a point of comparison for the test composites.

The water-column test with the suspended-particulate phase (SPP) of sediments provide an estimate of toxicity to water column organisms exposed to sediment as it falls through the water column at the disposal site. It can also provide an indication of water-column toxicity that might be encountered during the dredging process. SPP is the liquid portion of a 1:4 sediment/seawater slurry that is designed to simulate the dredging process. SPP tests will be conducted with a dilution series of 10%, 50%, and 100% SPP for each of the test composites. Reference sediments are not included in the SPP test. SPP tests will be conducted with the fish, *Menidia beryllina*, the mysid, *Americamysis bahia*, and larval mussels (*Mytilus* sp.).

Each test will include a negative control treatment that is run concurrent to the test sediments and will be the native sediment collected with the test organisms (for the solid-phase tests) or clean seawater (for the SPP tests). The negative control is a quality control measure that shows that test conditions were sufficient to support survival and development of the test organisms. A reference-toxicant test will also be conducted with each batch of test organisms to determine the relative sensitivity of the test organisms. Water quality parameters will be measured in all replicates at test initiation and termination, and in one replicate per treatment daily during the test. Parameters to be measured during this testing program include temperature, pH, dissolved oxygen, and salinity. In addition, bulk sediment pore-water ammonia will be measured prior to testing and pore water ammonia will be measured for each treatment on days 0 and 10. Following test termination, all data will be evaluated for adequate control performance.

Task 5: Bioaccumulation Testing of Sediment

In order to evaluate the potential for sediment-associated chemicals to accumulate in tissues of benthic organisms at the disposal site, 28-day bioaccumulation tests will be conducted with the clam, *Macoma nasuta*, and the marine worm, *Nephtys caecoides*. During the bioaccumulation test, clams and worms are exposed to test sediment for 28 days. Following the exposure period, the test organisms are held for 24 hours in clean seawater to void any sediment that may remain in the gut. A native control sediment and LA-3 Reference sediment will be tested concurrent to the test composites. Tissues from the test composites and reference replicates will be frozen and sent for chemical analysis.

Task 6: Tissue Chemistry

Tissues from the bioaccumulation tests will be analyzed for chemical residues. This proposal includes costs for conducting a broad suite of chemical analysis, however, it is likely that the analyte list can be refined following receipt of the sediment chemistry results and would dramatically reduce analytical costs. Previous investigations have indicated that the primary COPCs in Lower Newport Bay are DDTs, mercury, and organotins. It is possible that the analyte list could be limited to this subset of analytes.

Because each replicate from each treatment for each species is analyzed for tissue residues, the estimated number of analytical samples is 30 (15 for clams and 15 for worms). In addition, one background tissue sample will be analyzed. As with the sediment analysis, QA/QC samples will be analyzed concurrent to test samples and will be evaluated by NewFields.

Task 7: Data Analysis and Reporting

All chemistry and biological testing results and ancillary data will be entered into an Excel spreadsheet. For the solid phase tests, the limiting permissible concentration (LPC) for ocean disposal is based on statistical and numerical comparisons between the test composites and the reference treatments. For the water-column tests, the limiting permissible concentration (LPC) will be calculated using the STFATE model.

The final report will include a summary of methods used and any deviations from the protocols, a summary of all sediment and water chemistry, toxicity and bioaccumulation testing data, all raw data, reference-toxicant response, summary of water quality data, and chain-of-custody forms. A discussion of QA/QC results and their implications on the test data will also be presented. Both electronic and hardcopy versions of the report will be provided.

Task 8: Technical Support for Agency Review

During previous investigations, NewFields staff members have assisted clients in presenting the results of sediment investigations to USEPA, USACE, and other resource agencies. This is particularly helpful for project with a short timeline. At your request, we will attend and present the findings of this sediment evaluation to the SC-DMMT agencies and work with them

to determine appropriate disposal options for the proposed dredged material. It is difficult to determine the total cost for this task, as it will depend largely on the data generated during the study. This task is typically billed as time and materials with an amount not-to-exceed.

Estimated Timeline

From the notice to proceed (NTP) from the City and County, the field sampling will be completed within 4 weeks. Sample processing and chemical analysis will begin immediately following the field sampling. All chemical analyses should be complete within 3 weeks of the completion of field sampling. Data will be reviewed for data quality and then submitted to the agencies to determine the final compositing strategy. NewFields will meet with the City, County, and the SC-DMMT agencies to determine the appropriate compositing strategy (1 or 2 composites) and tissue chemistry analyte list based on the sediment chemistry (one week). Once the compositing strategy has been determined, biological and bioaccumulation testing will begin. Biological tests will be complete within 3 weeks, bioaccumulation tests require 4 weeks to complete and the tissue chemistry will require an additional 4 weeks to complete.

The draft report will be submitted to the City and County four weeks after validation of the tissue chemistry data. NewFields will provide a final report within 2 weeks of receiving comments from the City. The draft report will be available approximately 20 to 22 weeks after the NTP, provided that the review periods by the agencies and the City are within the time periods provided above. The timeline can be accelerated if the agency response times are faster than anticipated or if the City and County choose to analyze two test composites for bioassay and bioaccumulation testing.

Program Costs

The total not-to exceed cost estimate is based on costs associated with eight program tasks, as outlined in the technical proposal. The actual scope of Task 6 and the number of analytes required for tissue analysis will be determined by the results of the sediment chemistry and will require SC-DMMT approval. As such the actual costs for each task may differ from those presented on Table 1. However, the estimated costs by task are based on several analytical scenarios and the total not-to-exceed cost is expected to support the eventual program. The total estimated not-to-exceed cost for all activities associated with the Harbor Island/Linda Isle Channels SAP is \$80,320. Based on the areas owned by the City and County, the proposed costs will be split 34% (City) and 66% (County).

Table 1. Summary of Proposed Cost Summary by Task

Task	Estimated Costs	
	County	City
Task 1. Data Evaluation and Preparation of a SAP	(\$2,920)*	\$2,920
Task 2. Field Sampling	\$13,224	\$6,696
Task 3. Sediment Chemical Analysis	\$3,960	\$2,040
Task 4: Bioassay Testing	\$8,910	\$4,590
Task 5: Bioaccumulation Testing	\$4,356	\$2,244
Task 6: Tissue Chemistry	\$9,520	\$5,780
Task 7: Reporting and management	\$9,240	\$4,760
Task 8: Technical Support for Agency Review	\$3,300	\$1,700
Total Not to Exceed Amount	\$49,590	\$30,730

* credited to the County for prepayment of the City's portion of this task.

EXHIBIT B

Program Costs

The total not-to exceed cost estimate is based on costs associated with eight program tasks, as outlined in the technical proposal. The actual scope of Task 6 and the number of analytes required for tissue analysis will be determined by the results of the sediment chemistry and will require SC-DMMT approval. As such the actual costs for each task may differ from those presented on Table 1. However, the estimated costs by task are based on several analytical scenarios and the total not-to-exceed cost is expected to support the eventual program. The total estimated not-to-exceed cost for all activities associated with the Harbor Island/Linda Isle Channels SAP is \$80,320. Based on the areas owned by the City and County, the proposed costs will be split 34% (City) and 66% (County).

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* credited to the County for prepayment of the City's portion of this task.



NewFields
Billing Rates
2011

Position	Staff	Rate
Technical Director	Jack Q Word	\$175
Senior Scientist	Susie Watts	\$140
Senior Scientist	Bill Gardiner	\$140
Senior Scientist	Meg Pinza	\$140
Laboratory Manager	Brian Hester	\$100
Scientist II	Cindy Word	\$85
Scientist II	Bridget Gregg	\$85
Scientist II	Jay Word	\$90
Scientist I	Collin Ray	\$70
Scientist I	Mary Bacon	\$70
Laboratory Technician	Hillary Eichler	\$45
Laboratory Technician	Julia Levengood	\$45

NEWFIELDS
P.O. Box 216
4729 NE View Drive
Port Gamble, Washington 98364
360.297.6040 *tel* ~ 360.297.7268 *fax*
www.newfields.com

CERTIFICATE OF INSURANCE CHECKLIST

City of Newport Beach

This checklist is comprised of requirements as outlined by the City of Newport Beach. *

Date Received: 11-14-11 Dept./Contact Received From: Tania
Date Completed: 11-14-11 Sent to: Tania By: Carol
Company/Person required to have certificate: NewFeilds Companies, LLC
Type of contract: All other

I. GENERAL LIABILITY

EFFECTIVE/EXPIRATION DATE: 01/01/11 to 01/01/12

- A. INSURANCE COMPANY: Chartis Specialty Insurance Company
- B. AM BEST RATING (A- : VII or greater): A; Xv
- C. ADMITTED Company (Must be California Admitted):
Is Company admitted in California? ☐ Yes ☒ No
- D. LIMITS (Must be \$1M or greater): What is limit provided? 1,000,000
- E. ADDITIONAL INSURED ENDORSEMENT – please attach ☒ Yes ☐ No
- F. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? (completed Operations status does not apply to Waste Haulers or Recreation) ☒ Yes ☐ No
- G. ADDITIONAL INSURED FOR PRODUCTS AND COMPLETED OPERATIONS ENDORSEMENT (completed Operations status does not apply to Waste Haulers) ☒ Yes ☐ No
- H. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? ☒ Yes ☐ No
- I. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included? ☒ Yes ☐ No
- J. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording? ☐ Yes ☒ No
- K. ELECTED SCMAF COVERAGE (RECREATION ONLY): ☒ N/A ☐ Yes ☐ No
- L. NOTICE OF CANCELLATION: ☐ N/A ☒ Yes ☐ No

II. AUTOMOBILE LIABILITY

EFFECTIVE/EXPIRATION DATE: 01/01/11 to 01/01/12

- A. INSURANCE COMPANY: Commerce and Industry Ins. Co
- B. AM BEST RATING (A- : VII or greater) A; XV
- C. ADMITTED COMPANY (Must be California Admitted):
Is Company admitted in California? ☒ Yes ☐ No
- D. LIMITS (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min for Waste Haulers): What is limits provided? 1,000,000
- E. LIMITS Waiver of Auto Insurance / Proof of coverage (if individual) (What is limits provided?) _____
- F. PRIMARY & NON-CONTRIBUTORY WORDING (For Waste Haulers only): ☒ N/A ☐ Yes ☐ No
- G. HIRED AND NON-OWNED AUTO ONLY: ☒ N/A ☐ Yes ☐ No
- H. NOTICE OF CANCELLATION: ☐ N/A ☒ Yes ☐ No

III. WORKERS' COMPENSATION

EFFECTIVE/EXPIRATION DATE: 01/01/11 to 01/01/12

- A. INSURANCE COMPANY: Granite State Insurance Co
- B. AM BEST RATING (A- : VII or greater): A;XV
- C. ADMITTED Company (Must be California Admitted): ☒ Yes ☐ No
- D. WORKERS' COMPENSATION LIMIT: Statutory ☒ Yes ☐ No
- E. EMPLOYERS' LIABILITY LIMIT (Must be \$1M or greater) \$1,000,000
- F. WAIVER OF SUBROGATION (To include): Is it included? ☒ Yes ☒ No
- G. SIGNED WORKERS' COMPENSATION EXEMPTION FORM: ☒ N/A ☐ Yes ☐ No
- H. NOTICE OF CANCELLATION: ☐ N/A ☒ Yes ☐ No

ADDITIONAL COVERAGE'S THAT MAYBE REQUIRED

IV. PROFESSIONAL LIABILITY

☐ N/A ☐ Yes ☐ No

V POLLUTION LIABILITY

☐ N/A ☐ Yes ☐ No

V BUILDERS RISK

☐ N/A ☐ Yes ☐ No

HAVE ALL ABOVE REQUIREMENTS BEEN MET?
IF NO, WHICH ITEMS NEED TO BE COMPLETED?

☒ Yes ☐ No

Approved:



11-14-11

Agent of Alliant Insurance Services
Broker of record for the City of Newport Beach

Date

RISK MANAGEMENT APPROVAL REQUIRED (Non-admitted carrier rated less than _____;

Self Insured Retention or Deductible greater than \$_____) ☐ N/A ☒ Yes ☐ No

Reason for Risk Management approval/exception/waiver:

General Liability carrier is non admitted – please have risk manager approve has been approved by Lauren

Farley email 11-7-11

Approved:

Risk Management

Date

* Subject to the terms of the contract.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/04/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MCGRIFF, SEIBELS & WILLIAMS OF GEORGIA, INC.
5605 Glenridge Drive - Suite 300
Atlanta, GA 30342

CONTACT
NAME:
PHONE (A/C, No, Ext): 404 497-7500 FAX (A/C, No):
E-MAIL:
ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :Commerce and Industry Ins Co		
INSURER B :Chartis Specialty Insurance Company		26883
INSURER C :Insurance Co. of State of Pennsylvania		
INSURER D :Granite State Insurance Co.		
INSURER E :		
INSURER F :		

INSURED
NewFields Companies, LLC
1349 W. Peachtree Street, NW
Suite 2000
Atlanta, GA 30309

COVERAGES

CERTIFICATE NUMBER:DAMK8VYG

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$1,000,000 Per Project GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC		X	PROP14490949	01/01/2011	01/01/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			CA1932137	01/01/2011	01/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp/Coll Ded. 1,000
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
C D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A X	WC 1610185 (AOS) WC 1610187 (CA)	01/01/2011	01/01/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	PROFESSIONAL LIABILITY			PROP14490949	01/01/2011	01/01/2012	Each Claim \$ 1,000,000 Total for All Claims \$ 2,000,000 \$ \$ \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: RPG-54 Lower Newport Bay Sediment Evaluations

The City its officers, officials, employees and volunteers are included as Additional Insured on the General Liability policy referenced herein, as required by written contract. A Waiver of Subrogation is in favor of the certificate holder for the Workers' Compensation policy referenced herein as required by written contract. Where Additional Insured status is given the coverage provided said Additional Insured is primary and non-contributory over any other in force and collectible coverage as required by written contract.

CERTIFICATE HOLDER

City of Newport Beach California
3300 Newport Blvd
P.O. Box 1768
Newport Beach, CA 92658-8915

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM 01/01/2011 forms a part of Policy No. WC 001-61-0187

Issued to NEWFIELDS COMPANIES LLC

By GRANITE STATE INSURANCE COMPANY

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization with whom you have a written contract that requires you to obtain this agreement from us, as regards any work you perform for such person or organization.

The additional premium for this endorsement shall be 2 % of the total estimated workers compensation premium for this policy.